

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF THE
ADMINISTRATIVE INSPECTION OF:

No. 19-1704-M

Spivack, Incorporated d/b/a Verree Pharmacy

**APPLICATION FOR AN ADMINISTRATIVE INSPECTION WARRANT
UNDER THE CONTROLLED SUBSTANCES ACT, 21 U.S.C. § 880**

I, MaryAnn M. Farnsworth, being duly sworn, depose and state under oath that:

1. I am a duly authorized Diversion Investigator of the Drug Enforcement Administration (DEA), United States Department of Justice, assigned to the Philadelphia Division Office.
2. Under 21 U.S.C. §§ 878(a)(2) and 880(b)(1), (2), and (3), and 28 C.F.R., Section 3 of the Appendix to Subpart R of Part 0, I am authorized to execute administrative inspection warrants for the purpose of inspecting controlled premises of persons and firms registered under the Controlled Substances Act (CSA), 21 U.S.C. §§ 800 *et seq.*, in order to inspect, copy and verify the correctness of all records, reports, and other documents required to be kept or made, under the CSA, including those required by 21 U.S.C. §§ 821, 827, 829, 871 and 21 C.F.R. §§ 1304.01 *et seq.*, and all other appropriate actions pursuant to 21 C.F.R. § 1316.03.
3. Spivack, Incorporated is registered under the provisions of the CSA, 21 U.S.C. §§ 822 *et seq.*, under the name Verree Pharmacy as a retail pharmacy, with privileges in handling and dispensing Schedules II, IIN, III, IIIN, IV, and V controlled substances, under the following DEA registration:

DEA #BV1068546, Exp. 05/31/2020, Registered Address: 7960 Verree Road, Philadelphia, PA 19111, and date of Registration: 09/08/1987
4. Verree Pharmacy is required to keep complete and accurate records of all controlled substances received, sold, delivered, or otherwise disposed of pursuant to 21 U.S.C.

§ 827, and 21 C.F.R. § 1304.01 *et seq.* on the controlled premises. Those records include inventories and records of all controlled substances and paper prescriptions. *See, e.g.*, 21 C.F.R. § 1304.04(h).

5. I have examined the files and records of the DEA regarding Verree Pharmacy.

6. The DEA applied for an administrative inspection warrant for Verree Pharmacy in 2007. *See United States v. In the Matter of the Administrative Inspection: Verree Pharmacy*, 2:07-mj-01138 (E.D. Pa.). DEA records indicate that the investigation was initiated based on excessive purchases of oxycodone in 2006, as well as a large request for oxycodone from Verree to Parmed Pharmaceuticals. DEA records also indicate that, when the diversion investigators entered the premises to execute the warrant, the pharmacist indicated that the purchases were due to stock-piling less expensive generics to pass on the savings to his customers. The pharmacist indicated he had called the DEA about the issue prior to the warrant, and the diversion investigators observed a large inventory of oxycodone products. Therefore, the audit was never performed.

7. DEA records also indicate that diversion investigators conducted the last scheduled investigation of Verree Pharmacy on February 4, 2015. Records indicate that the diversion investigators primarily focused their investigation on record-keeping and inventory requirements, rather than medical propriety and corresponding responsibility of dispensing the controlled substances. The scheduled investigation resulted in a finding of violations and a letter of admonition to Verree Pharmacy. The letter, dated March 4, 2015, indicates that the diversion investigators found discrepancies in the accountability audit regarding Oxycontin 30mg tablets, Percocet 5/325mg tablets, and Oxycodone APAP 5/325mg tablets; and a non-compliant biennial inventory. Instead of pursuing an enforcement action, Verree Pharmacy was provided the

opportunity to become compliant with the CSA, and the owner's response of March 31, 2015 indicated an intent to become compliant.

8. In 2018 and 2019, controlled substance distributor Rochester Drug Co-Operative, Inc. (RDC) filed several "Suspicious Order/Activity Reports" with the DEA regarding Verree Pharmacy's controlled substance orders from RDC.¹ For example, in September 2018, RDC reported that it had reviewed Verree Pharmacy's dispensing information for several months in 2018 and found a cash payment rate of 13.37% and several patients who were receiving an opioid, anti-depressant/benzodiazepine, and a muscle relaxant.² In October 2018, RDC filed another suspicious order/activity report regarding Verree Pharmacy, this time for submitting an order for the benzodiazepine temazepam that exceeded Verree's monthly threshold purchase limit. In March 2019, RDC filed another suspicious order/activity report regarding Verree Pharmacy, this time for submitting an order for the opioid hydrocodone APAP 7.5/325mg that exceeded Verree's monthly threshold purchase limit.

9. As a DEA registered retail pharmacy, with privileges in dispensing Schedules II, IIN, III, IIIN, IV, and V controlled substances, Verree Pharmacy is authorized to order and dispense controlled substances. On June 6, 2019, a query was submitted for Verree Pharmacy's controlled substance purchasing through the DEA's Automation of Reports and Consolidated Orders System (ARCOS). ARCOS is designed to track the delivery of controlled substances

¹ In April of this year, the U.S. Attorney's Office for the Southern District of New York filed criminal and civil charges against Rochester Drug Co-Operative for unlawfully distributing oxycodone and fentanyl, conspiring to defraud the DEA, and knowingly failing to comply with its legal obligation to report suspicious orders of controlled substances to the DEA.

² This combination of controlled substances is particularly suspicious and commonly regarded as the "holy trinity," given their synergistic effect resulting in a greater "high" for those abusing controlled substances. The combination also has a higher likelihood of adverse health effects for the user, including the potential for death.

from the manufacturer all the way through its purchase by a pharmacy or other dispenser.

ARCOS allows the DEA to track the quantity and types of purchases that pharmacies are making and compare those purchases to other pharmacies. However, the ARCOS system does not track full purchase history for all schedules of controlled substances.

10. A comparison was made of the ARCOS ordering patterns for Verree Pharmacy with pharmacies located in the same zip code from 2016 to 2019. During this time frame, there were at least 14 additional DEA registered pharmacies located in the Philadelphia, PA 19111 zip code. This comparison indicates that Verree Pharmacy ranked as the top pharmacy in the purchasing of Oxycodone product compared to other local pharmacies in the zip code.

Specifically:

- a. For 2016, Verree Pharmacy was the top purchaser of Oxycodone product, purchasing 692,300 tablets of combined Oxycodone product. The second top pharmacy purchased 232,500 tablets of combined Oxycodone product.
- b. For 2017, Verree Pharmacy was the top purchaser of Oxycodone product, purchasing 623,100 tablets of combined Oxycodone product. The second top pharmacy purchased 273,600 tablets of combined Oxycodone product.
- c. For 2018, Verree Pharmacy was the top purchaser of Oxycodone product, purchasing 570,250 tablets of combined Oxycodone product. The second top pharmacy purchased 418,900 tablets of combined Oxycodone product.
- d. For 2019 to date, Verree Pharmacy was the second top purchaser of Oxycodone product, purchasing 209,500 tablets of combined Oxycodone product with the top pharmacy, a cancer center pharmacy, purchasing 267,900 tablets of combined Oxycodone product.

11. Based on the foregoing, there is a valid public interest in the effective enforcement of the CSA and its implementing regulations and a need for the DEA to inspect Verree Pharmacy's registered location and records, to establish a full and complete accounting of all regulated equipment and controlled substances received, manufactured, distributed, dispensed, imported, exported, compounded, or otherwise disposed of at the locations, and a valid public interest sufficient to justify the inspection of Verree Pharmacy's registered location and records. This inspection will be designed to insure compliance with the CSA and the regulations promulgated thereunder.

12. The inspection of Verree Pharmacy's registered location will be conducted within regular business hours. This Diversion Investigator's and her colleagues' credentials will be presented to the registrant, along with a copy of the Administrative Inspection Warrant, if granted.


13. The inspection will include the inspection and copying of inventories, records, reports, prescriptions, order forms, invoices, and any other records, reports, and other documents required to be kept or made under the Controlled Substances Act, 21 U.S.C. §§ 800 *et seq.*, and its implementing regulations. The inspection will also include the inspection and inventory of pertinent equipment, finished or unfinished controlled substances, listed chemicals and other substances or materials, containers, and labeling found at the controlled premises relating to the CSA, checking of records and information on distribution of controlled substances or listed chemicals by the registrant or regulated person and any applicable records or samples of controlled substances, and all other things therein (including records, files, papers, processes, controls and facilities) appropriate for verification of the records, reports, documents referred to above or otherwise bearing on the provisions of the CSA and its implementing regulations. This

Administrative Inspection Warrant, if granted, will be not be used to obtain financial data, sales data other than shipment data, or pricing data.³

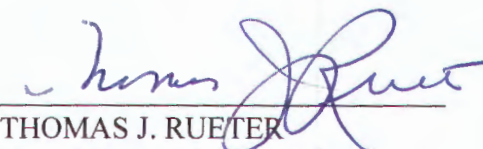
14. I will be accompanied by one or more Investigators who are employees or are otherwise authorized by the Attorney General of the United States to conduct administrative inspections.

15. The administrative inspection will begin as soon as practicable after the issuance of the warrant. A return will be made to the Court upon the completion of the inspection, no later than ten (10) days thereafter.

16. I have verified and have knowledge of the facts alleged in this affidavit and they are true to the best of my knowledge.


MARYANN M. FARNSWORTH
Diversion Investigator
Drug Enforcement Administration

Sworn to before me and signed in my presence on this 8th day of
October, 2019.


THOMAS J. RUETER
United States Magistrate Judge

³ Concurrent with this Administrative Inspection Warrant, I also plan to serve a DEA administrative subpoena to Verree Pharmacy pursuant to 21 U.S.C. § 876, which will require the production of a broader array of materials, including emails, text messages, and other records that are not covered by this Warrant. I also understand that the U.S. Department of Health and Human Services, Office of Inspector General plans to issue its own administrative subpoena in furtherance of a healthcare fraud investigation at the same time that this Warrant is executed.